



COURT MARTIAL

Citation: *R. v. Lavigne*, 2015 CM 1016

Date: 20151028

Docket: 201548

Standing Court Martial

Canadian Forces Base Esquimalt
Esquimalt, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Leading Seaman P.M. Lavigne, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

[1] Leading Seaman Lavigne admitted his guilt to the third charge of having willfully made a false entry in a document made by him that was required for official purposes under section 125 of the *National Defence Act*; and to the fifth charge of conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act*. The offences relate to the mailing in Canada of stun guns, which are prohibited weapons in Canada, when the offender was onboard Her Majesty's Canadian Ship (HMCS) Regina while the ship was alongside of Victoria, the Seychelles. The prosecution withdrew two other counts under section 130 of the *Act* contrary to section 104(2) (Unauthorized importing or exporting) and 101(2) (Transfer without authority) of the *Criminal Code* with leave of the court.

[2] The charges read as follows:

THIRD CHARGE
(Alternate to the

WILFULLY MADE A FALSE ENTRY IN A
DOCUMENT MADE BY HIM THAT WAS

fourth charge)

REQUIRED FOR OFFICIAL PURPOSES

s. 125 NDA

Particulars: In that he, on or about 8 April 2014, aboard HMCS REGINA, entered "Flashlight sets (x6)" onto Canada Post form CP72, knowing that entry to be false; and,

FIFTH CHARGE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

s. 129 NDA

Particulars: In that he, on or about 8 April 2014, onboard HMCS REGINA, did mail to Canada prohibited weapons, to wit: six devices designed to be capable of injuring, immobilizing or incapacitating a person or an animal by discharging an electrical charge produced by means of the amplification or accumulation of the electrical current generated by a battery, where the device is designed or altered so that the electrical charge may be discharged when the device is of a length of less than 480 mm, contrary to HMCS REGINA Routine Order(s) 555.

[3] The prosecution and defence counsel jointly recommend that Leading Seaman Lavigne be sentenced to detention for a period of five days and a reprimand. Although the court is not bound by this joint submission, it can only reject it if the recommendation is contrary to the public interest and the sentence would bring the administration of justice into disrepute. Counsel have demonstrated that their position falls within the acceptable range of sentences imposed for similar offences.

[4] For clarity, I will reproduce in its integrality the statement of circumstances that was entered as Exhibit 6 in the proceedings. It reads as follows:

Leading Seaman Lavigne enrolled in the Canadian Armed Forces on 15 October 2010 in the trade of Maritime Engineer. Leading Seaman Lavigne completed his Maritime Engineer Mechanic Qualification Level in 2012 and was promoted to his present rank on 30 October 2014. Leading Seaman Lavigne has served on board numerous Canadian Patrol Frigates while being posted to Canada's west coast and has deployed as part of OPERATION (OP) CARRIBE (Caribbean Basin, Oct- Dec 2012), Task Force ARTEMIS (Gulf of Aden, Feb-May 2014) and Task Force OP REASSURANCE (Central Mediterranean, May-August 2014).

OP ARTEMIS is the Canadian Armed Forces participation in counterterrorism and maritime security operations across the Red Sea,

the Gulf of Aden, the Gulf of Oman and the Indian Ocean. Canada demonstrates solidarity with partners and allies that are working together for peace and security in the maritime environment of the greater Middle East region through participation in OP ARTEMIS. Task Force ARTEMIS is the Royal Canadian Navy Task Force that carries out OP ARTEMIS tasks on behalf of Canada.

Leading Seaman Lavigne was posted to HMCS REGINA, a Canadian Patrol Frigate, in 2013, at which time he was an able seaman. HMCS REGINA was assigned to Task Force ARTEMIS and departed for the Gulf of Aden in early January 2014.

Numerous HMCS REGINA Routine Orders, including those issued on 24 January 2014 and 15 Feb 2014 while the ship was enroute to theatre, included specific direction regarding mail sent by personnel from the ship during OP ARTEMIS. These orders included direction not to send anything by mail that was listed as prohibited in the Fleet Mail Office Brief, which was attached to the Routine Orders. That list of prohibited items included weapons. HMCS REGINA Routine Order 555, dated 11 Mar 2014, also included the same direction with the attached FMO Brief, including the same list of items that members of the ship's company were prohibited from mailing from the ship, including weapons.

In early February 2014, while en route to join Task Force ARTEMIS, HMCS REGINA made a port visit to Manila, in the Philippines. Able Seaman Lavigne, along with two leading seamen and a petty officer 2nd class from HMCS REGINA visited a local bar called the Hobbit House. Nearby vendors were demonstrating their wares in an alley outside the bar. One of the devices was a combination flashlight-stun gun which Able Seaman Lavigne showed interest in. One of the leading seamen saw Able Seaman Lavigne try the stun gun feature of the device. One of the leading seamen warned Able Seaman Lavigne that stun guns were illegal in Canada and not to buy one. Able Seaman Lavigne did not buy any of the devices while in the company of the petty officer 2nd class and leading seamen; however, he did purchase them later and prior to leaving Manila.

HMCS REGINA was assigned to Task Force ARTEMIS from February to May 2014, and during that time the ship conducted operations in the Gulf of Aden. On 8 April 2014, during a port visit to Victoria, the Seychelles, Able Seaman Lavigne attended the HMCS REGINA Ship's Chart Room and presented a parcel addressed to a friend of his, Jennifer Fisher, at a residential address in Victoria, Canada. That parcel had a Canada Post International Parcel Form 72 attached to it which listed the contents as "Flashlight sets (x6)" with a value of \$30

Canadian. The Canada Post Form 72 was signed by Able Seaman Lavigne as the sender. The parcel was mailed back to Canada from HMCS REGINA via DND mail.

HMCS REGINA was reassigned to OPERATION REASSURANCE in late April while Leading Seaman Lavigne was serving onboard.

OP REASSURANCE is the Canadian Armed Forces deployment of personnel in Central and Eastern Europe as part of North Atlantic Treaty Organization (NATO) assurance measures. OP REASSURANCE refers to the military activities undertaken by Canadian Armed Forces to support NATO assurance measures through the provision of military capabilities for training, exercises, demonstrations and assigned NATO tasks. The Canadian Armed Forces response in support of NATO's request for enhanced assurance measures promotes security and stability in Central and Eastern Europe, and demonstrates the readiness and professionalism of the Canadian Armed Forces. HMCS REGINA was re-tasked to join NATO Standing Maritime Forces in the Mediterranean Sea in early May 2014 as part of Task Force REASSURANCE. HMCS REGINA conducted patrols in support of the NATO assurance measures until early August 2014. Able Seaman Lavigne remained on board HMCS REGINA for the duration of the operational tour.

The parcel that Able Seaman Lavigne had mailed from HMCS REGINA while the ship was alongside Victoria, the Seychelles, arrived in Canada and was examined by Canada Border Services Agency (CBSA) on 23 April 2014. The parcel contained six stun guns, which are prohibited devices in Canada. The stun guns were also able to be operated as flashlights in an alternate mode. Also included in the parcel were six webbing cases, six charging cables, six wrist straps and \$25 cash. The parcel was seized by CBSA on 23 April 2014. CBSA notified Royal Canadian Mounted Police Federal Serious and Organized Crime, who then notified the Canadian Armed Forces Military Police (MP) Unit Esquimalt.

An investigation was commenced by the MP General Investigation Section. The parcel and contents were released by CBSA to the MP on 29 April 2014 to be used as evidence in this case. Numerous MP investigators were involved in the investigation, including Corporal Kajan of the MP General Investigation Service here in Esquimalt and Petty Officer 2nd Class McGoldrick from the MP Unit in Halifax. Upon examining the contents, Corporal Kajan noted that labels had been previously attached to the stun guns. The labels had been defaced but one was still visible and read "POLICE 10000W LR-1101". The devices had also been modified by having a plastic protective cover glued in

place which hid the charging port and slider (mode selector) switch at the butt end of the device.

On 16 May 2014 Corporal Kajan interviewed Jennifer Fisher, the friend of Able Seaman Lavigne, who stated that she has almost daily contact with him. She was expecting a parcel from Able Seaman Lavigne containing six flashlights that he wanted to use for working on his bikes and \$25. He had asked her to purchase candy for him with the money and send the candy to him while he was deployed. This was the only parcel that Able Seaman Lavigne had ever sent to her.

Petty Officer 2nd Class McGoldrick was dispatched to meet HMCS REGINA to conduct interviews with various individuals on board. Able Seaman Lavigne was initially interviewed on 28 May 2014 while the ship was alongside at the Chania Navy Base, Crete, Greece. Able Seaman Lavigne was duly cautioned and agreed to speak to Petty Officer 2nd Class McGoldrick. He admitted to purchasing the items in Manila but believed that they were only flashlights. He did not realize that they were stun guns. He mailed them to Jennifer Fisher because the flashlights he had onboard ship were adequate and he wanted them back in Canada to use while working on his bike and his truck. He marked the Canada Post form as containing flashlights, as that is what he believed the items were.

He initially denied making any modifications to the flashlights but, after agreeing to being fingerprinted, said that he had glued the covers on the bottom ends of the flashlights. He was offered the opportunity to speak to Petty Officer 2nd Class McGoldrick again before 3 June 2014 when Petty Officer 2nd Class McGoldrick was in theatre.

On 2 June 2014, Able Seaman Lavigne was re-interviewed under caution at his own request by Petty Officer 2nd Class McGoldrick and fully admitted what he had done. Specifically, Able Seaman Lavigne admitted that when he bought the six stun guns in Manila, he had known that they were stun guns and that he had modified them to remove the markings on them and make them appear more used. He admitted that he did not write "stun guns" on the Canada Post parcel form as he knew that CBSA would have intercepted them. He provided a typewritten statement. He stated that the stun guns were for his own use and not for others, and that he did not intend to sell them. He stated that he realized how useless the stun guns would be as novelty items since he wouldn't be showing them to anyone.

Able Seaman Lavigne sent numerous emails to Jennifer Fisher in the days that followed which showed that he realized that he would get

into trouble for sending the package and that he had made a mistake in sending it.

The stun guns were sent for examination by an expert, Mr D.P. Dawson of Rassetica Testing Limited. Mr Dawson conducted a forensic examination of the devices and prepared a report, finding that they were conducted energy weapons and that each of the six fulfilled the description and requirements set out in the *Criminal Code of Canada* for a prohibited weapon. He noted that these devices were battery-operated, rechargeable and could be easily concealed. He also noted that the charge that each device produced would not only be above the uncomfortable pain threshold, but would be very painful due to the higher pulse rate as compared to conducted energy weapons used by law enforcement.

Charges were laid against Able Seaman Lavigne on 3 March 2015 pursuant to section 130 of the *National Defence Act* for violation of section 103(1)(a) of the *Criminal Code*. The case was referred for court martial by the commanding officer of HMCS REGINA. No election was given as there was no jurisdiction to hear this matter by way of summary trial. The referral authority referred the case to the Director of Military Prosecutions. The five charges that appear on the charge sheet were preferred by Commander S.M. Archer, an officer authorized in accordance with section 165.15 of the *National Defence Act*, on 30 June 2015.

[5] The fundamental purpose of sentencing at a court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet one or more of the following objectives:

- (a) the protection of the public, including the Canadian Forces;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences; and
- (d) the reformation and rehabilitation of the offender.

[6] The sentence must also take into consideration the following principles:

- (a) it must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility;
- (b) the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and

- (c) a court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances; however, the court must act with restraint in determining sentence and imposing such punishment or punishments that constitute the minimum necessary intervention to maintain discipline.

[7] In this case, the sentence must emphasize the objectives of denunciation, specific and general deterrence as well as rehabilitation.

[8] The prosecution rightly submitted that the aggravating elements in the circumstances include the fact that the ship was en route to theatre; the offender was warned that the devices were illegal in Canada and told specifically not to buy them but went ahead anyway; the fact that the offender modified the weapons and that he made specific arrangements in Canada with a friend for the reception of the illegal parcel before its shipment; and, finally, the fact that the stun guns were operative and could cause injury. However, the offender admitted his actions to police authorities in May 2014 and entered pleas of guilty today. In doing so, it clearly indicates an acceptance of his responsibility and it shows remorse. Prior to this court martial, Leading Seaman Lavigne had no conduct sheet or criminal record. Therefore, the court accepts the joint submission made by counsel.

FOR THESE REASONS, THE COURT:

[9] **FINDS** you guilty of the third charge under section 125 of the *National Defence Act* for having willfully made a false entry in a document made by him that was required for official purposes; and to the fifth charge under section 129 of the *National Defence Act* for conduct to the prejudice of good order and discipline.

[10] **DIRECTS** that the proceedings on the alternative fourth charge be stayed.

[11] **SENTENCES** you to detention for a period of five days and a reprimand.

Counsel:

The Director of Military Prosecutions as represented by Commander S. Archer

Major C.E. Thomas, Defence Counsel Services, Counsel for Leading Seaman Lavigne